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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/819,404	03/29/2001	Lawrence Gene Costello		3797

7590 06/23/2004

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EXAMINER

NGUYEN, TRINH T

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 06/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/819,404

Applicant(s)

COSTELLO ET AL.

Examiner

Trinh T Nguyen

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3/29/01 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Priority

- 1 Applicant's claim for domestic priority/benefit under 35 U.S.C. 119(e), 120, and 121 is acknowledged.

Abstract

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Note that in this case, the abstract (as amended on page 6) is not a single paragraph.

Furthermore, in line 6 of the amended abstract, the phrase "seed and and gas," should be rewritten as --seed and gas,--.

Drawings

3. It is noted that there is no description (or explanation) to the drawing (i.e., Block Diagram Seed purification using UV-Activated oxygen) in the specification.

Claim Objections

4. Claim 3 is objected to because of the following informalities: in lines 5 & 8, the phrase "the process according to claim one wherein" (on the second and third occurrence) should be deleted. Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 2 and 3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are replete with indefinite phrases too numerous to mention completely. Applicant is encouraged to carefully review the claims and rewrite them so that all claimed limitations are positively and clearly set forth and it can be determined what is being claimed.

The following are examples only and not intended to be a complete listing thereof:

In claim 1: lines 4-5, the phrase "(dependent on size of tank and quantity of water)" is confusing because it is unclear whether the limitation in the parenthesis is part of the claimed invention (see similar problem in claims 2 and 3).

In claims 2 and 3, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention.

See MPEP § 2173.05(d). Furthermore, the phrase "but not limited to" is confusing because it is unclear as to what this phrase defines or intends to be encompassed.

In claim 3: line 9, the term "this" is confusing because it is unclear as to what "this" is referred to? (i.e., the water or the activated oxygen).

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Davidson (US 4,315,380).

For claim 1, Davidson discloses a process for treatment of seeds, comprising the steps of: putting the seeds (3) into a holding, soaking, or chilling tank (1); sparging activated oxygen (8) into the water for a specific time to attain maximum bacteria reduction.

For claim 2, Davidson further discloses that the seeds are treated with activated oxygen to attain maximum bacteria reduction (see lines 58-65 of col. 5).

For claim 3, Davidson further discloses that the seeds are treated with activated oxygen to attain maximum bacteria reduction; the water used during germination and sprouting/growing duration is saturated with activated oxygen and sprayed on the seed; and the water used during wash down rinse is saturated with activated oxygen during

process of preparing for distribution (see lines 10-65 of col. 2, lines 20-55 of col. 3, and lines 58-65 of col. 5).


Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: US 5,561,944 teaches a method for treating plants with feed of water containing ozone and carbon dioxide.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Trinh T Nguyen whose telephone number is (703) 306-9082. The examiner can normally be reached on M-F (9:30 A.M to 6:00 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Carone can be reached on (703) 306-4198. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.


Trinh Nguyen
Patent Examiner, AU 3644
06/15/04